

## HEARING DECISION

Petitioner:

Petitioner's Address:

Petitioner's Mother:

Respondent:

Deer Valley Unified School District  
20402 N. 15<sup>th</sup> Avenue  
Phoenix, AZ 85027

Respondent's Representative:

Susan Segal, Attorney at Law  
Deer Valley Unified School District

Petitioner's Representative:

Impartial Hearing Officer:

Harold J. Merkow  
333 W. El Camino Drive  
Phoenix, AZ 85021

Dates of Hearing:

March 8, 2001

Date of Decision:

March 12, 2001

This matter came on for hearing on March 8, 2001. The purpose of the hearing was to hear the due process hearing request of Petitioner regarding the Respondent school district's proposed change of placement for Petitioner. Petitioner's mother appeared in person and represented herself and Petitioner. Respondent school district appeared through its Pupil Personnel Services Director, Maxine Reardon, and was represented by its counsel, Susan Segal, Attorney at Law.

Petitioner's mother is seeking a due process hearing to review the proposed change of Petitioner's placement from an in-school self-contained special education program to a private placement day school. Having heard testimony of the witnesses, having read and considered the exhibits submitted by the parties and being fully advised in the premises (both parties waived oral final argument), the undersigned hearing officer now makes the following findings of fact and conclusions of law and enters the following decision.

### *FINDINGS OF FACT*

1. Petitioner is a 14 year old boy who is in the 8<sup>th</sup> grade at a middle school [name deleted] in the Respondent school district. Petitioner also attended the same middle school for the 7<sup>th</sup> grade during the 1999-00 school year. In both years, Petitioner has been placed in a self-contained special education classroom, which classroom has nine students.

2. Petitioner is entitled to receive special education services from the Respondent school district based on a diagnosis of attention deficit hyperactivity disorder (ADHD) for which he has been treated since the second grade. For categorization purposes, Petitioner is entitled to receive special education services based on an emotional disability (ED). Petitioner is prescribed Adderal and Paxil for his ADHD condition.

3. The self contained class in which Petitioner has been placed for the seventh and eighth grades is a cross-categorical class and Petitioner is placed in that class on a full-day basis for academic classes. In addition, Petitioner participates in regular lunch and recess activities, music, art, P.E., clubs and electives with students who do not have disabilities.

4. A significant portion of Petitioner's Individual Education Plan (IEP) relates to behavior control. The IEP sets a goal for Petitioner to "use problem solving techniques to control his behavior" with objectives such as "choose and accept appropriate solutions without adult intervention without rude/negative comments" B90% for 4 consecutive weeks, "choose appropriate ways to deal with his anger without yelling, arguing or physical altercations" B100% for 4 consecutive weeks, Achoose appropriate language (no swear words) in class and on the bus or on campus outside of class when dealing with conflict@B90% for 4 consecutive weeks and Aaccept responsibility for his actions as shown by his verbal acceptance@B90% for 4 consecutive weeks.

5. During the 1999-2000, Petitioner received discipline on seven occasions for disrespectful or rude behavior. Petitioner was also disciplined for forging his mother's name, failure to appear for detention, throwing objects in class, writing an obscene note, pointing a homemade bow and arrow in class and profanity. The most severe disciplinary action taken was an in-school suspension.

6. In September 2000, Dr. Maxine Reardon sought a psychiatric examination for Petitioner as the IEP was "concerned about his current mental status". At about the same time, Dr. Reardon requested that a neuropsychological examination be performed as the IEP team was "concerned there may be frontal lobe involvement due to a fall sustained in fifth grade".

7. During the first three months of the 2000-01 school year, Petitioner received discipline for three incidents, which incidents involved 1). pushing and placing another student in a head lock, 2). fighting with another boy causing a swollen cheek and 3). confronting a staff member with profanity and insubordination when he refused to release a boy who he was spinning around. During this period, Petitioner was required to attend detention three times and he received two off-campus suspensions.

8. On November 4 and November 12, 2000, Petitioner was evaluated by Dr. David Pool, a neuropsychologist. Dr. Pool's evaluation was "to document his neurocognitive and social/emotional disposition, and to assist with recommendations for academic and/or clinical follow-up. Petitioner's [name deleted] school is

particularly concerned about the possibility of cognitive difficulties sustained secondary to falling approximately 40 feet from a tree in December 1996".

9. Dr. Pool obtained a history from Petitioner, his mother and school personnel, tests were administered and Petitioner was interviewed. Dr. Pool concluded that Petitioner's intellectual functioning was in the average to low average range. Dr. Pool concluded that there was no evidence of impairment of memory functions, that there was no evidence of excessive impulsivity or response variability but that there was difficulty in executive functioning "which suggests difficulty with regard to mental flexibility". Dr. Pool also found difficulty "in the area of complex constructional ability" which suggests difficulty "in the area of visumotor planning and organization". Dr. Pool concluded that "assessment of social/emotional functioning yielded evidence of difficulties with adjustment, particularly with regard to conduct and aggressive behavior".

10. Dr. Pool recommended that "precautions should be taken to protect others from aggressive behavior", that Petitioner "would benefit from increased structure and highly predictable circumstances. He may show more cognitive, emotional and/or behavioral difficulties in situations that are overstimulating, where circumstances are unpredictable, when there is time pressure and in the presence of complex and/or competing task demands" and Dr. Pool recommended that "counseling to facilitate social/emotional adjustment is highly recommended".

11. On November 20, 2000, when Petitioner came into the lunchroom, he cut

in line ahead of other students. The lunch monitor told Petitioner to go to the back of the line but Petitioner refused. A teacher then came to the lunch line and asked Petitioner to go to the back of the line. Petitioner refused and began using profanity. The Assistant Principal then came to the lunch line and asked Petitioner to come to the office. Petitioner said that he was not leaving until he got his lunch and the Assistant Principal offered to have his lunch brought to the office. Petitioner refused to leave the line. The Assistant Principal then told Petitioner that he, the Assistant Principal, would not use any force to remove Petitioner from the line, however, if Petitioner did not go to the office, he, the Assistant Principal, would call the police to have Petitioner removed. Petitioner informed the Assistant Principal that “the fucking police can’t do anything”. Petitioner then left the line, he shoved the monitor out of his way and he began walking towards the office accompanied by the Assistant Principal. As Petitioner was walking down the hall, he ripped a poster off of the wall. As Petitioner was walking down the hall, he threatened to blow up the school. Throughout this incident, Petitioner used profanity when talking to the monitor, teacher and Assistant Principal.

12. When Petitioner got to the office, he was informed that he would be suspended for harassment, making threats and insubordination. Petitioner’s mother was called and she was informed that Petitioner would be suspended from school.

13. Because Petitioner receives special education services, a manifestation determination was required and a conference was set for November 28, 2000. The

conference participants noted that Petitioner's "impulse control remains a question and concern", that Petitioner "misinterprets what he hears" that he was "not letting go of issues and continued punishment ideation", that Petitioner "has crossed barriers with verbal and physical contacts with adults supervising", that there was a concern for self and others, that Petitioner "does not take responsibility for actions", he "shows little or no remorse in any situation seen at school" and that his behaviors "escalated greatly this year to physical aggression". The conference members determined that the incident on November 20 was related to Petitioner's disability in that they felt that Petitioner did not understand the import and consequences of his actions and that his disability impaired his ability to control his behavior. The participants recommended that Petitioner be placed in a private day placement. Petitioner's mother did not initially accept the recommendation and asked whether Petitioner could be tried again in a half-day program, which the special education teacher did not feel would be successful.

14. At the conclusion of the manifestation determination conference, the attendees agreed that Petitioner's IEP would be modified to include a specific day placement, that until such placement could be finalized, Petitioner would receive home tutoring and that exit criteria from the day placement would be included in a new IEP.

15. Petitioner's mother submitted a request for a due process hearing in which she objected to moving Petitioner from the school he was attending. She wrote:

“During the manifestation determination it was determined that Petitioner [name deleted] was not responsible for his actions based on his disability...and he was not to be disciplined for his actions they then in the next breath advised they needed to transfer him to a (sic) outside facility...If that is not discipline...What is it?????? I do not agree with this decision (sic)”. She also wrote “Totally disagree with the whole proceedings basically...in the past 3 months Petitioner [name deleted] has endured the death of his grandmother...having to put his dog to sleep...and I do not think this is a good time to be changing his school”.

16. The undersigned had considerable difficulty establishing contact with Petitioner’s mother, however, contact was later established and an evidentiary hearing was thereafter set for March 8, 2001 at which time Petitioner’s mother appeared.

17. At the hearing, Petitioner’s mother continued to believe that Petitioner should be returned to the school he attended before being suspended in November and she stated that she is “not overly” concerned about the fights in which Petitioner has been involved during the 200-2001 school year because, with the exception of the incident in which another student’s cheek was reddened, the fights have not been “alarming”. Petitioner’s mother also does not wish to have Petitioner transferred to a private day program because she does not regard him as overly aggressive and that his swearing is not significant. She further stated that Petitioner is happy at the school he attends and that he likes the school.



18. At the hearing, the school principal testified that the half-day sessions that were tried earlier were ended because Petitioner has control problems in those classes and situations which were not structured, such as at lunch.

### *CONCLUSIONS OF LAW*

1. Petitioner is entitled to a free, appropriate public education within the least restrictive environment.

2. All due process rights to which Petitioner and his mother are entitled have been provided.

3. All notice requirements to which Petitioner and his mother are entitled have been provided by the Respondent school district.

4. Petitioner is entitled to receive special education services based on a handicapping condition of ADHD, which is categorized as an emotional disability.

5. Petitioner is entitled to a free, appropriate public education in the least restrictive environment and is entitled to receive an education in the most appropriate educational environment.

6. Based on the anecdotal evidence presented at this hearing, because of Petitioner's disruption of the educational environment, Petitioner requires a highly structured educational matrix that provides special education services for aggression control, behavior management, behavior modification training, impulse control and

protection for himself and others.

7. Based on the professional evaluation presented at the hearing, Petitioner requires a high level of supervision for his own and others' safety which should be provided in a structured placement that emphasizes Petitioner's clinical needs for response control, anger management and interaction skills.

8. The least restrictive and most appropriate educational environment for Petitioner at this time is a private day placement which would include small setting class sizes together with a highly structured environment that emphasizes Petitioner's clinical needs.

9. A change of Petitioner's placement to a private day school placement based on his disciplinary record as well as the events of November 20, 2000 is not a disciplinary action by the Respondent school district.

10. Insufficient evidence exists in the record of this matter on which to conclude that Petitioner should resume his education in the middle school which he was attending until November 20, 2000 as, from the totality of the evidence presented, Petitioner has become more of a disciplinary problem in the current school year, Petitioner's actions have been more physically intrusive during the current school year and Petitioner has been more insubordinate to staff and administrators during the current school year. Additionally, no evidence was presented at the hearing on which to conclude that Petitioner's anti-social conduct would abate or be discontinued if he was permitted to return to the middle school.

11. The District's proposal to change Petitioner's placement from a self-contained on-campus classroom to a private day placement is supported by a greater weight of the evidence.

12. Respondent school district is the prevailing party in this matter.

### *HEARING OFFICER'S DECISION AND ORDERS*

It is the decision of the undersigned hearing officer that the due process request of Petitioner's mother is DENIED.

It is evident that Petitioner's aggressive behavior has increased during the current school year and that Petitioner's deportment has escalated to the point of unacceptable physical contact with staff members (shoving the lunch monitor out of his way). The progression of physical aggression can be seen by Petitioner punching another boy in the face in August 2000, pushing a student and placing him in a headlock in October 2000 and spinning a boy around in November 2000. Then, on November 20, when Petitioner was asked to leave a line where he cut in front of other students, Petitioner went on a verbal and physical rampage.

These actions from August to November are not isolated. The record contains Petitioner's disciplinary record for both the 7<sup>th</sup> and 8<sup>th</sup> grades and one can easily see that the number and the intensity of the misbehavior has increased. It is also significant that a large number of incidents occurred during lunch, recess and after

school (including detention periods).

Given that Petitioner has been assigned to a self-contained classroom for both years, it is evident that the self-contained educational environment is not providing enough control mechanisms or structure to prevent Petitioner from engaging in so many counterproductive behaviors. Indeed, regardless of being in a self-contained class, Petitioner's latest exhibition of antisocial behavior occurred in the lunchroom!

Other than isolating Petitioner from other students throughout the day, there is nothing more the Respondent school district is currently able to offer in a public school setting to have Petitioner respond positively and systematically without resorting to anger, without losing control, without vulgarity and, most importantly, without physical aggression. Both the anecdotal and professional evidence supports much greater intervention than has been provided to date.

Petitioner's mother wishes to have Petitioner resume his education at the same middle school where these untoward events have occurred. Petitioner's mother bases her wish on Petitioner's familiarity with and affinity for other students who attend the school. Unstated by Petitioner's mother, however, is what would change if Petitioner returned to the middle school. Petitioner's mother suggests that the school require Petitioner to have daily tracking forms completed so that she will know whether he had a good day or a bad day. She also suggests that the school try the half-day attendance again to cut down on the amount of time available for

misbehavior.

The undersigned does not believe that either of these approaches will dissuade Petitioner from being aggressive with other students or staff, they will not improve his understanding of and appreciation for solving problems without resort to violence and vulgarity and they will not improve his response control mechanisms. In fact, because many of the incidents in which Petitioner has been involved for which he has been discipline have occurred in ancillary settings outside the structured classroom, there is nothing to indicate how his unbecoming behaviors would decrease or be eliminated if the time for his academic classes was reduced or if he carries a progress report paper from class to class.

On the other hand, there is sufficient anecdotal and professional evidence on which to conclude that a highly structured, intense program is needed. Indeed, two of the most recent incidents involving Petitioner occurred after he was evaluated by the neuropsychologist and one may fairly infer that the opinions and recommendations offered by the neuropsychologist would be magnified by Petitioner's after-evaluation conduct.

The counterweight to Petitioner's mother's wishes about continuing Petitioner in the current school is the District's present ability to immerse Petitioner in a structure that can teach Petitioner to interdict the behaviors about which everyone is so concerned. The District suggested six private day programs, which may be suitable for Petitioner's needs. The District understands and has informed

Petitioner's mother that exit criteria from the private day program will be developed and Petitioner's mother has also been informed that Petitioner remains entitled to participate in clubs, sports and after-school activities at the public school to which he would otherwise be assigned.

Continued home tutoring is not an acceptable solution since Petitioner would miss the interaction with others that is so vital to his ability to learn the coping skills necessary to reverse the pattern of disruption that has been documented within the last one and one-half year. Home tutoring is not the least restrictive environment for Petitioner.

It behooves all parties to break the cycle of aggression (which is becoming increasingly physical and violent), to foster mature conflict resolution methods, to develop methods to forego retaliation and punishment and to learn how to de-escalate situations. Petitioner cannot attain a high enough level of skill and proficiency in the current public school self-contained classroom environment and the overwhelming opinion of the teachers, support staff and professionals endorse a more structured, tightly controlled environment for Petitioner's needs.

The undersigned is impressed with the arguments supporting a private day program placement for Petitioner and the undersigned believes that, at this time, such a private day program placement will be the least restrictive environment in which Petitioner may receive educational and special education services. Accordingly, the hearing officer enters the following orders:

It is the ORDER of the undersigned hearing officer that the Respondent school district consult in writing with Petitioner's mother within five (5) business days and present her with no fewer than three (3) alternative private day school placements that the Respondent school district believes are appropriate for Petitioner's education and further, the Respondent school district will undertake any action necessary to facilitate personal visits by Petitioner and his mother to those private day school placements.

It is the further ORDER of the undersigned hearing officer that the Respondent school district convene an IEP conference within fifteen (15) business days to amend and modify Petitioner's existing IEP for placement at a private day program in the metropolitan area, which private day program shall be the program selected by Petitioner and his mother from the list provided by the Respondent school district or, in the absence of such a selection, at the program determined by a majority of the IEP team members to be the most advantageous for Petitioner, and the IEP team will create a new IEP for the ensuing instructional year with placement at the private day program, which new IEP will include exit criteria for Petitioner to return from the private day placement program to a public school educational environment and which IEP will also include any extracurricular activities in which Petitioner desires to participate at the public school.

### *APPEAL RIGHTS*

THIS DECISION IS A FINAL DECISION. Any party aggrieved by this decision may file an appeal with the Arizona Department of Education, Exceptional Student Division, 1535 West Jefferson, Phoenix, Arizona, within thirty-five (35) days following your receipt of this decision.

DATED this 12<sup>th</sup> day of March 2001.

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HAROLD J. MERKOW  
Due Process Hearing Officer